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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SUCCESSFACTORS, INC.,

Plaintiff,

v.

SOFTSCAPE, INC.,

Defendant.

Case No.: C-08-1376 (CW)

PROTECTIVE ORDER

This Order is meant to govern the use of, and protect from public disclosure, any non-public and confidential or proprietary information used or disclosed in this litigation.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as

1 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
2 Stipulated Protective Order creates no entitlement to file confidential information under seal.
3 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
4 that will be applied when a party seeks permission from the Court to file material under seal.

5 **2. DEFINITIONS**

6 **2.1 Party:** Any party to this action, including all of its officers, directors,
7 employees, consultants, retained experts, and outside counsel (and their support staff).

8 **2.2 Disclosure or Discovery Material:** All items or information, regardless of
9 the medium or manner generated, stored, or maintained (including, among other things, testimony,
10 transcripts, or tangible things) that are produced or generated in disclosures or responses to
11 discovery in this matter.

12 **2.3 “Confidential” Information or Items:** Information (regardless of how
13 generated, stored or maintained) or tangible things that qualify for protection under standards
14 developed under Federal Rule of Civil Procedure 26(c). This designation includes but is not
15 limited to information which the Designating Party (i) would not normally reveal to third parties
16 except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in
17 good faith is confidential and/or protected by a right to privacy under federal or state law or any
18 other applicable privilege or right related to confidentiality or privacy. This designation does not
19 include information that was publicly known prior to disclosure, or that, after disclosure, becomes
20 publicly known as a result of publication by one having right to do so.

21 **2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:**
22 Extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
23 party would create a substantial risk of competitive harm or serious injury that could not be
24 avoided by less restrictive means. This designation includes but is not limited to trade secrets;
25 technical data and other confidential research, development and production information relating to
26 the products or technology at issue in this case; financial, commercial, product planning,
27 engagement terms, and marketing information relating to the products or technology in this case;
28 personal information; intellectual property protection strategies and practices; and industry

1 analyses.

2 **2.5 “Highly Confidential – Outside Attorneys’ Eyes Only” Information or**
3 **Items:** Extremely sensitive “Confidential Information or Items” whose disclosure to another
4 Party or non-party would create a substantial risk of competitive harm or serious injury that could
5 not be avoided by less restrictive means. This designation shall include: (i) trade secret or
6 confidential lists of customers or prospective customers or lists of their contact information or
7 their confidential and proprietary information; (ii) trade secret or confidential pricing; (iii) trade
8 secret or information related to existing or proposed company financing, partnerships or mergers
9 and acquisitions; or (iv) any trade secret or confidential non-price business terms for business
10 proposals or contracts with existing or potential customers, partners and prospects.

11 **2.6 Receiving Party:** A Party that receives Disclosure or Discovery Material
12 from a Producing Party.

13 **2.7 Producing Party:** A Party or non-party that produces Disclosure or
14 Discovery Material in this action.

15 **2.8 Designating Party:** A Party or non-party that designates information or
16 items that it produces in disclosures or in responses to discovery as “Confidential,” “Highly
17 Confidential — Attorneys’ Eyes Only” or “Highly Confidential – Outside Attorneys’ Eyes Only.”

18 **2.9 Protected Material:** Any Disclosure or Discovery Material that is
19 designated as “Confidential,” “Highly Confidential – Attorneys’ Eyes Only,” or as “Highly
20 Confidential – Outside Attorneys’ Eyes Only.”

21 **2.10 Outside Counsel:** Attorneys who are not employees of a Party but who are
22 retained to represent or advise a Party in this action.

23 **2.11 House Counsel:** Attorneys who are employees of a Party. For purposes of
24 this Protective Order, it shall be Julian Ong for SuccessFactors, and Susan Mohr for Softscape.

25 **2.12 Counsel (without qualifier):** Outside Counsel and House Counsel (as well
26 as their support staffs).

27 **2.13 Expert:** A person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert

1 witness or as a consultant in this action and who is not a past or a current employee, officer or
2 director of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated
3 to become an employee, officer or director of a Party or a competitor of a Party. This definition
4 includes a professional jury or trial consultant retained in connection with this litigation.

5 **2.14 Professional Vendors:** Persons or entities that provide litigation support
6 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;
7 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
8 subcontractors.

9 **2.15 Presentation:** Exhibit 1 of the Declaration of Robert Bernshteyn in
10 Support of Plaintiff's Ex Parte Application for a Temporary Restraining Order and Order to Show
11 Cause re Preliminary Injunction (Dkt. No. 30).

12 **3. SCOPE**

13 The protections conferred by this Stipulation and Order cover not only Protected Material
14 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
15 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
16 parties or counsel to or in court or in other settings that might reveal Protected Material.

17 **4. DURATION**

18 Even after the termination of this litigation, the confidentiality obligations imposed by this
19 Order shall remain in effect until a Designating Party agrees otherwise in writing, a court order
20 otherwise directs, or the information is publicly disclosed as a result of publication by one having
21 the right to do so. The Court shall retain jurisdiction to enforce the terms of the Order for a period
22 of six months after final termination of the action.

23 **5. DESIGNATING PROTECTED MATERIAL**

24 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

25 Each Party or non-party that designates information or items for protection under this Order must
26 take care to limit any such designation to specific material that qualifies under the appropriate
27 standards. A Designating Party must take care to designate for protection only those parts of
28 material, documents, items, or oral or written communications that qualify—so that other portions

1 of the material, documents, items, or communications for which protection is not warranted are
 2 not swept unjustifiably within the ambit of this Order.

3 a. Mass, indiscriminate, or routinized designations are prohibited.
 4 Designations that are shown to be clearly unjustified, or that have been made for an improper
 5 purpose (e.g., to unnecessarily encumber or impede the case development process, or to impose
 6 unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.
 7 Counsel shall not designate any discovery material “CONFIDENTIAL”, “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
 9 ATTORNEYS’ EYES ONLY” without first making a good-faith determination that protection is
 10 warranted.

11 b. If it comes to a Party’s or a non-party’s attention that information or
 12 items that it designated for protection do not qualify for protection at all, or do not qualify for the
 13 level of protection initially asserted, that Party or non-party must promptly notify all other parties
 14 that it is withdrawing the mistaken designation.

15 c. Information or items concerning the following subjects are not to be
 16 designated as “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” including but not
 17 limited to: (i) ownership/control of IP addresses 68.236.68.19, 82.108.171.66, 24.34.56.79 or
 18 98.216.168.122 and the identity of any computer using those IP addresses; (ii) communication
 19 from those IP addresses or Softscape, Inc. with SuccessFactors, Inc. servers; and (iii) the user
 20 name “John Anonymous,” associated e-mail address “hcmknowledge2008a@gmail.com,” and all
 21 communications from, with or concerning same.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
 23 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
 24 ordered, material that qualifies for protection under this Order must be clearly so designated
 25 before the material is disclosed or produced. The Order shall apply to materials provided or
 26 exchanged by the Parties prior to the signing of this Order.

27 Designation in conformity with this Order requires:

28 a. For information in documentary form (apart from transcripts of

depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” at the bottom of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (“CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”) at the bottom of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”).

b. For testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of

1 testimony that is entitled to protection, and when it appears that substantial portions of the
 2 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
 3 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
 4 have up to 20 days to identify the specific portions of the testimony as to which protection is
 5 sought and to specify the level of protection being asserted (“CONFIDENTIAL,” “HIGHLY
 6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE
 7 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
 8 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
 9 Protective Order.

10 Transcript pages containing Protected Material must be separately bound by the court
 11 reporter, who must affix to the bottom of each such page the legend “CONFIDENTIAL,”
 12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
 13 OUTSIDE ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering or
 14 sponsoring the witness or presenting the testimony.

15 c. For information produced in some form other than documentary,
 16 and for any other tangible items, that the Producing Party affix in a prominent place on the exterior
 17 of the container or containers in which the information or item is stored the legend
 18 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” or “HIGHLY
 19 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY.” If only portions of the
 20 information or item warrant protection, the Producing Party, to the extent practicable, shall
 21 identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly
 22 Confidential — Attorneys’ Eyes Only” or “Highly Confidential – Outside Attorneys’ Eyes Only.”

23 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
 24 failure to designate qualified information or items as “Confidential” or “Highly Confidential —
 25 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
 26 protection under this Order for such material. If material is appropriately designated as
 27 “Confidential,” “Highly Confidential — Attorneys’ Eyes Only” or “Highly Confidential – Outside
 28 Attorneys’ Eyes Only,” after the material was initially produced, the Receiving Party, on timely

1 notification of the designation, must make reasonable efforts to assure that the material is treated
2 in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party's
5 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
6 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
7 waive its right to challenge a confidentiality designation by electing not to mount a challenge
8 promptly after the original designation is disclosed.

9 **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a
10 Designating Party's confidentiality designation must do so in good faith and must begin the
11 process by conferring directly (in voice to voice dialogue; other forms of communication are not
12 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
13 explain the basis for its belief that the confidentiality designation was not proper and must give the
14 Designating Party an opportunity to review the designated material, to reconsider the
15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
16 designation. A challenging Party may proceed to the next stage of the challenge process only if it
17 has engaged in this meet and confer process first.

18 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a
19 confidentiality designation after considering the justification offered by the Designating Party may
20 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
21 applicable) that identifies the challenged material and sets forth in detail the basis for the
22 challenge. Each such motion must be accompanied by a competent declaration that affirms that
23 the movant has complied with the meet-and-confer requirements imposed in the preceding
24 paragraph and that sets forth with specificity the justification for the confidentiality designation
25 that was given by the Designating Party in the meet-and-confer dialogue.

26 The burden of persuasion in any such challenge proceeding shall be on the Designating
27 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
28 question the level of protection to which it is entitled under the Producing Party's designation.

1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
 3 disclosed or produced by another Party or by a non-party in connection with this case only for
 4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 5 disclosed only to the categories of persons and under the conditions described in this Order. When
 6 the litigation has been terminated, a Receiving Party must comply with the provisions of section
 7 11, below (“FINAL DISPOSITION”). Protected Material must be stored and maintained by a
 8 Receiving Party at a location and in a secure manner that ensures that access is limited to the
 9 persons authorized under this Order.

10 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
 11 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party
 12 may disclose any information or item designated CONFIDENTIAL only to:

- 13 a. the Receiving Party’s Outside Counsel of record in this action, as
 14 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
 15 for this litigation;
- 16 b. the officers, directors, and employees (including House Counsel) of
 17 the Receiving Party to whom disclosure is reasonably necessary for this litigation;
- 18 c. Experts (as defined in this Order) of the Receiving Party to whom
 19 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
 20 Bound by Protective Order” (Exhibit A);
- 21 d. the Court and its personnel;
- 22 e. court reporters, their staffs, and professional vendors to whom
 23 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
 24 Bound by Protective Order” (Exhibit A);
- 25 f. during their depositions or at hearings, witnesses where it appears on
 26 the face of the document or other item or from other documents or testimony that the
 27 CONFIDENTIAL information or item has been received or authored by that witness, or
 28 communicated to that witness, or it otherwise appears on the face of the document or other item

that the document or item contains information about which it appears reasonably likely that the witness has discoverable information. Witnesses shall not be permitted to retain copies of CONFIDENTIAL materials or exhibits. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

g. the author of the document or the original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” only to:

a. the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

b. no more than one House Counsel of a Receiving Party who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A), except that House Counsel may not have access to the following documents, which are to be labeled “HIGHLY CONFIDENTIAL — OUTSIDE ATTORNEYS’ EYES ONLY” as defined in paragraph 2.5 of this Order;

c. Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

d. the Court and its personnel;

e. court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and

f. the author of the document or the original source of the information.

1 **7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL**
2 **— ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE**
3 **ATTORNEYS’ EYES ONLY” Information or Items to “Experts”**

4 a. Unless otherwise ordered by the Court or agreed in writing by the
5 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
6 information or item that has been designated “HIGHLY CONFIDENTIAL — ATTORNEYS’
7 EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” first
8 must make a written request to the Designating Party that (1) sets forth the full name of the Expert
9 and the city and state of his or her primary residence, (2) attaches a copy of the Expert’s current
10 resume, (3) identifies the Expert’s current employer(s), and (4) lists any other cases or arbitrations
11 in which the Expert has testified as an expert at trial or by deposition within the preceding four
12 years.

13 b. A Party that makes a request and provides the information specified
14 in the preceding paragraph may disclose the subject Protected Material to the identified Expert
15 unless, within five court days of delivering the request, the Party receives a written objection from
16 the Designating Party. Any such objection must set forth in detail the grounds on which it is
17 based.

18 c. A Party that receives a timely written objection must meet and
19 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
20 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
21 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
22 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must
23 describe the circumstances with specificity, set forth in detail the reasons for which the disclosure
24 to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
25 suggest any additional means that might be used to reduce that risk. In addition, any such motion
26 must be accompanied by a competent declaration in which the movant describes the Parties’
27 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
28 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve

1 the disclosure.

2 In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of
3 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
4 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
6 **OTHER LITIGATION.**

7 If a Receiving Party is served with a subpoena or an order issued in other litigation that
8 would compel disclosure of any information or items designated in this action as
9 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" or
10 "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," the Receiving Party
11 must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event
12 more than three court days after receiving the subpoena or order. Such notification must include a
13 copy of the subpoena or court order.

14 The Receiving Party also must immediately inform in writing the Party who caused the
15 subpoena or order to issue in the other litigation that some or all the material covered by the
16 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
17 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
18 caused the subpoena or order to issue.

19 The purpose of imposing these duties is to alert the interested parties to the existence of
20 this Protective Order and to afford the Designating Party in this case an opportunity to try to
21 protect its confidentiality interests in the court from which the subpoena or order issued. The
22 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
23 confidential material — and nothing in these provisions should be construed as authorizing or
24 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

25 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
27 Material to any person or in any circumstance not authorized under this Stipulated Protective
28 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the

1 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
2 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
3 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
4 Be Bound” that is attached hereto as Exhibit A.

5 **10. FILING PROTECTED MATERIAL**

6 Without written permission from the Designating Party or a court order secured
7 after appropriate notice to all interested persons, a Party may not file in the public record in this
8 action any Protected Material. A Party that seeks to file under seal any Protected Material must
9 comply with Civil Local Rule 79-5. Specifically, a party filing materials under seal shall place the
10 documents in a sealed envelope with instructions that the document is filed pursuant to the
11 Stipulated Protective Order and that the envelope is not to be opened absent further order of the
12 court. Additionally, the envelope should be labeled to identify the title of the case, the case
13 number, and the title of the document.

14 **11. FINAL DISPOSITION**

15 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
16 (60) days after the final termination of this action, each Receiving Party must return all Protected
17 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all
18 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
19 the Protected Material. With permission in writing from the Designating Party, the Receiving
20 Party may destroy some or all of the Protected Material instead of returning it. Whether the
21 Protected Material is returned or destroyed, the Receiving Party must submit a written certification
22 to the Producing Party (and, if not the same person or entity, to the Designating Party) by the
23 sixty-day deadline that identifies (by category, where appropriate) all the Protected Material that
24 was returned or destroyed and that affirms that the Receiving Party has not retained any copies,
25 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
26 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
27 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
28 even if such materials contain Protected Material. Any such archival copies that contain or

1 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
 2 (“DURATION”), above.

3 **12. NO WAIVER OF PRIVILEGE**

4 If material subject to a claim of attorney-client privilege or work-product immunity
 5 is inadvertently produced, such production shall in no way prejudice or otherwise constitute a
 6 waiver of, or estoppel as to, any claim of privilege or work-product immunity for such
 7 information. If a Party has inadvertently produced material subject to a claim of immunity or
 8 privilege, then promptly following that Party’s written request identifying the material for which a
 9 claim of inadvertent production is made, that material shall be returned and all copies or
 10 reproductions of that material that may have been made shall be destroyed. The party returning
 11 such information may move the Court for an Order compelling production of such information,
 12 but the motion shall not assert as a ground for production the fact or circumstances of the
 13 inadvertent production.

14 **13. MISCELLANEOUS**

15 **13.1 Right to Further Relief.** Nothing in this Order abridges the right of any
 16 person to seek its modification by the Court in the future.

17 **13.2 Right to Assert Other Objections.** By stipulating to the entry of this
 18 Protective Order no Party waives any right it otherwise would have to object to disclosing or
 19 producing any information or item on any ground not addressed in this Stipulated Protective
 20 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
 21 the material covered by this Protective Order.

22 IT IS SO ORDERED.

23 4/23/08

24 DATED: _____



25 HONORABLE CLAUDIA WILKEN
 26 UNITED STATES DISTRICT COURT JUDGE
 27
 28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____,
declare under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order in the case of *SuccessFactors, Inc. v. Softscape, Inc.*, No. C 08-1376 CW. I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ of

as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____